

AMENDED IN SENATE JULY 23, 1997
AMENDED IN ASSEMBLY APRIL 14, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1483

Introduced by Assembly Member Gallegos

February 28, 1997

An act to amend Sections 10232.1 and 10234.93 of, to amend, renumber, and add Section 10232.8 of, and to add Section 10232.2 to, the Insurance Code, relating to health insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1483, as amended, Gallegos. Insurance: long-term care.

Existing California law regulates long-term care insurance, and requires that insurance to provide certain benefits. Existing law authorizes the Insurance Commissioner to waive certain of those requirements under certain circumstances.

Existing federal law provides that long-term care insurance is entitled to certain favorable tax treatment if it meets certain requirements.

~~This bill would require every policy or certificate of long-term care insurance to be identified as either federally tax qualified or federally non tax qualified. It would require insurers that offer federally tax qualified coverage to also offer federally non tax qualified coverage that is intended to be a qualified long-term care insurance contract as provided by federal law to be identified as such with a specified disclosure~~

statement, and, similarly would require every policy that is not intended to be a qualified long-term care insurance contract as provided by federal law be identified as such. It would require insurers that offer policies that are intended to be federally qualified long-term care insurance policies to also fairly and affirmatively offer, market, and sell policies that are not intended to be federally qualified long-term care contracts.

The bill would set forth eligibility criteria for ~~federally tax qualified and federally non tax qualified~~ policies intended to be qualified long-term care insurance contracts as provided by federal law as well as for policies that are not intended to be federally qualified. The bill would revise various definitions.

The bill would enact related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds as follows:

2 (1) Current California law requires that long-term
3 care insurance policies and certificates provide
4 substantial benefits to consumers in return for the
5 premiums paid.

6 (2) Recent changes in federal law allow for the sale of
7 long-term care policies and certificates that may be
8 eligible for favorable federal tax treatment. However, to
9 be eligible for favorable tax treatment, the policies and
10 certificates must conform to federal standards for
11 eligibility, benefits, and consumer protections.

12 (3) Pursuant to federal law, the eligibility
13 requirements for benefits under a “federally tax
14 qualified” policy are more restrictive than the eligibility
15 requirements for benefits in policies authorized under
16 the current California Insurance Code. This means that
17 persons who purchase federally tax qualified policies and
18 certificates may be required to have a greater level of
19 disability before qualifying for benefits than individuals
20 who purchase coverage that conforms to the more



1 permissive eligibility requirements of the California
2 Insurance Code as of January 1, 1997.

3 (4) The tax benefits of federally tax qualified policies
4 may not be of value to every Californian, as the tax
5 benefits vary by the age, income, and other medical
6 expenses of the insurance purchaser.

7 (b) The Legislature declares it is in the interest of the
8 people of California that:

9 (1) California consumers should be given
10 opportunities to purchase both types of policies or
11 certificates—those meeting the current requirements of
12 the California Insurance Code and those meeting the
13 requirements to be federally tax qualified.

14 (2) California consumers should be informed of the
15 choices available and insurers, brokers, agents, and other
16 entities engaged in the marketing of long-term care
17 insurance should fully evaluate each applicant's situation
18 and work to ensure that the applicant purchases a policy
19 best suited to that applicant's personal and financial
20 circumstances.

21 (3) It is the purpose of ~~these amendments~~ *this act* to
22 authorize *the sale in California of* a new category of
23 ~~federally tax qualified policies and certificates to be sold~~
24 ~~in California~~ *long-term care insurance policies and*
25 *certificates intended to qualify under the federal Health*
26 *Insurance Portability and Accountability Act of 1996*
27 *(P.L. 104-191)* and to require that insurers continue to
28 make available to California consumers policies and
29 certificates that comply with the more permissive
30 eligibility requirements of the current law. It is also the
31 intent of the Legislature that consumers be informed of
32 the choice of policies available and given appropriate
33 information to make informed choices.

34 SEC. 2. Section 10232.1 of the Insurance Code is
35 amended to read:

36 ~~10232.1. (a) Every policy or certificate shall be~~
37 ~~identified as either "federally tax qualified" or "federally~~
38 ~~non tax qualified." A "federally tax qualified" policy or~~
39 ~~certificate shall comply with the requirements of the~~
40 ~~Health Insurance Portability and Accountability Act of~~

~~1 1996, Public Law 104-191, in addition to all of the~~
~~2 requirements of this chapter. A policy or certificate that~~
~~3 does not comply with the requirements of Public Law~~
~~4 104-191 and all amendments and regulations thereto shall~~
~~5 be labeled as “federally non tax qualified.” The words~~
~~6 “Federally Tax Qualified” or “Federally Non Tax~~
~~7 Qualified” shall be prominently displayed on page one of~~
~~8 the policy form and the outline of coverage, and in the~~
~~9 application.~~

10 10232.1. (a) Every policy that is intended to be a
11 qualified long-term care insurance contract as provided
12 by Public Law 104-191 shall be identified as such by
13 prominently displaying and printing on page one of the
14 policy form and the outline of coverage and in the
15 application the following words: “This contract for
16 long-term care insurance is intended to be a federally
17 qualified long-term care insurance contract and may
18 qualify you for federal tax benefits.” Every policy that is
19 not intended to be a qualified long-term care insurance
20 contract as provided by Public Law 104-191 shall be
21 identified as such by prominently displaying and printing
22 on page one of the policy form and the outline of coverage
23 and in the application the following words: “This contract
24 for long-term care insurance is not intended to be a
25 federally qualified long-term care insurance contract.”

26 (b) Any policy or certificate in which benefits are
27 limited to the provision of institutional care shall be called
28 a “nursing facility only” policy or certificate and the
29 words “Nursing Facility Only” shall be prominently
30 displayed on page one of the form and the outline of
31 coverage. The commissioner may approve alternative
32 wording if it is more descriptive of the benefits.

33 (c) Any policy or certificate in which benefits are
34 limited to the provision of home care services, including
35 community-based services, shall be called a “home care
36 only” policy or certificate and the words “Home Care
37 Only” shall be prominently displayed on page one of the
38 form and the outline of coverage. The commissioner may
39 approve alternative wording if it is more descriptive of
40 the benefits.

(d) Only those policies or certificates providing benefits for both institutional care and home care may be called “comprehensive long-term care” insurance.

SEC. 3. Section 10232.2 is added to the Insurance Code, to read:

10232.2. Every insurer that offers ~~“federally tax qualified” policies shall concurrently offer policies that are “federally non tax qualified” as defined in subdivision (a) of Section 10232.1. These tax qualified and non tax qualified policies shall be identical except for the thresholds establishing eligibility for home care benefits as provided by this chapter. policies that are intended to be federally qualified long-term care insurance contracts shall fairly and affirmatively concurrently offer, market, and sell long-term care insurance policies that are not intended to be federally qualified, as described in subdivision (a) of Section 10232.1. All long-term care insurance contracts approved after the effective date of this section shall meet all of the requirements of this chapter.~~

SEC. 4. Section 10232.8 is added to the Insurance Code, to read:

10232.8. (a) In every long-term care policy or certificate issued before December 31, 1997, and in every policy or certificate issued after January 1, 1998, that is ~~“federally non tax qualified”~~ *not intended to be a federally qualified long-term care insurance contract* and provides home care benefits, the threshold establishing eligibility for home care benefits shall be at least as permissive as a provision that the insured will qualify if either one of two criteria are met:

(1) Impairment in two *out of seven* activities of daily living.

(2) Impairment of cognitive ability.

The policy or certificate may provide for lesser but not greater eligibility criteria. The commissioner, at his or her discretion, may approve other criteria or combinations of criteria to be substituted, if the insurer demonstrates that the interest of the insured is better served.

1 “Activities of daily living” in every ~~“federally non-tax~~
2 ~~qualified”~~ policy or certificate that *is not intended to be*
3 *a federally qualified long-term care insurance contract*
4 and provides home care benefits *shall* include eating,
5 bathing, dressing, ambulating, transferring, toileting, and
6 continence; “impairment” means that the insured needs
7 human assistance, or needs continual substantial
8 supervision; and “impairment of cognitive ability” means
9 deterioration or loss of intellectual capacity due to
10 organic mental disease, including Alzheimer’s disease or
11 related illnesses, that requires continual supervision to
12 protect oneself or others.

13 (b) In every long-term care policy or certificate issued
14 after January 1, 1998, that is ~~“federally tax-qualified”~~
15 *intended to be a federally qualified long-term care*
16 *insurance contract* as described in subdivision (a) of
17 Section 10232.1, the threshold establishing eligibility for
18 home care benefits shall provide that a chronically ill
19 insured will qualify if either one of two criteria are met:

20 (1) Impairment in two *out of six* activities of daily
21 living.

22 (2) Impairment of cognitive ability.

23 Other criteria shall be used in establishing eligibility ~~if~~
24 ~~the Secretary of the United States Department of the~~
25 ~~Treasury prescribes such by regulation.~~ *for benefits if*
26 *federal law or regulations allow other types of disability*
27 *to be used.*

28 A licensed health care professional ~~must~~, *independent*
29 *of the insurer, shall* certify that the insured meets the
30 threshold establishing eligibility for benefits and ~~must~~
31 *shall* prepare a written plan of care. *The eligibility*
32 *assessment and plan of care shall be required to result*
33 *from a face-to-face assessment with the insured.* The
34 written certification ~~must~~ *shall* be renewed every 12
35 months. The costs to have a licensed health care
36 professional certify the insured’s initial and continued
37 eligibility for benefits and prepare written plans of care
38 shall not count against the lifetime maximum of the policy
39 or certificate.

1 “Activities of daily living” in every ~~“federally tax~~
2 ~~qualified”~~ policy or certificate *intended to be a federally*
3 *qualified long-term care insurance contract as provided*
4 *by Public Law 104-191 shall* include eating, bathing,
5 dressing, transferring, toileting, and continence;
6 “impairment in activities of daily living” means the
7 insured needs substantial human assistance due to a loss
8 of functional capacity to perform the activity, as the most
9 permissive interpretation of these terms under federal
10 law and regulations allows; “impairment of cognitive
11 ability” means the insured needs substantial human
12 supervision to protect self or others from threats to health
13 and safety due to severe cognitive impairment, including
14 Alzheimer’s disease or related illnesses, as the most
15 permissive interpretation of these terms under federal
16 law and regulations allows; “licensed health care
17 practitioner” means a physician, registered nurse,
18 licensed social worker, or other individual whom the
19 Secretary of the United States Department of the
20 Treasury may prescribe by regulation; and “plan of care”
21 means a written description of the insured’s needs and a
22 specification of the type, frequency, and providers of all
23 formal and informal long-term care services required by
24 the insured, and the cost, if any.

25 ~~(e) The definitions of “activities of daily living” to be~~
26 ~~used in policies and certificates issued after January 1,~~
27 ~~1998, include the following:~~

28 ~~(1) Eating, which shall mean reaching for, picking up,~~
29 ~~and grasping a utensil and cup; getting food on a utensil,~~
30 ~~and bringing food, utensil, and cup to mouth;~~
31 ~~manipulating food on plate; and cleaning face and hands~~
32 ~~as necessary following meal.~~

33 ~~(2) Bathing, which shall mean cleaning the body using~~
34 ~~a tub, shower, or sponge bath, including getting a basin~~
35 ~~of water, managing faucets, getting in and out of tub or~~
36 ~~shower, and reaching head and body parts for soaping,~~
37 ~~rinsing, and drying.~~

38 ~~(3) Dressing, which shall mean putting on, taking off,~~
39 ~~fastening, and unfastening garments and undergarments~~
40 ~~and special devices such as back or leg braces, corsets,~~

1 ~~elastic stockings or garments, and artificial limbs or~~
2 ~~splints.~~

3 ~~(4) Toileting, which shall mean getting on and off a~~
4 ~~toilet or commode and emptying a commode, managing~~
5 ~~clothing and wiping and cleaning the body after toileting,~~
6 ~~and using and emptying a bedpan and urinal.~~

7 ~~(5) Transferring, which shall mean moving from one~~
8 ~~sitting or lying position to another sitting or lying position;~~
9 ~~for example, from bed to or from a wheelchair or sofa,~~
10 ~~coming to a standing position, or repositioning to~~
11 ~~promote circulation and prevent skin breakdown.~~

12 ~~(6) Continence, which shall mean the ability to control~~
13 ~~bowel and bladder as well as use ostomy or catheter~~
14 ~~receptacles, and apply diapers and disposable barrier~~
15 ~~pads.~~

16 ~~(7) Ambulating, which shall mean walking or moving~~
17 ~~around inside or outside the home.~~

18 *(c) The definitions of “activities of daily living” to be*
19 *used in policies and certificates that are intended to be*
20 *federally qualified long-term care insurance shall be at*
21 *least as permissive as the following:*

22 *(1) Eating, which shall mean feeding oneself by*
23 *getting food in the body from a receptacle (such as a*
24 *plate, cup, or table) or by a feeding tube or intravenously.*

25 *(2) Bathing, which shall mean washing oneself by*
26 *sponge bath or in either a tub or shower, including the act*
27 *of getting into or out of a tub or shower.*

28 *(3) Continence, which shall mean the ability to*
29 *maintain control of bowel and bladder function; or when*
30 *unable to maintain control of bowel or bladder function,*
31 *the ability to perform associated personal hygiene*
32 *(including caring for a catheter or colostomy bag).*

33 *(4) Dressing, which shall mean putting on and taking*
34 *off all items of clothing and any necessary braces,*
35 *fasteners, or artificial limbs.*

36 *(5) Toileting, which shall mean getting to and from*
37 *the toilet, getting on or off the toilet, and performing*
38 *associated personal hygiene.*

39 *(6) Transferring, which shall mean the ability to move*
40 *into or out of bed, a chair or wheelchair.*

1 *The definitions to be used in policies and certificates for*
2 *impairment in activities of daily living, “impairment in*
3 *cognitive ability,” and any third eligibility criterion*
4 *allowed by federal regulations, shall be the most*
5 *permissive, verbatim definitions of these benefit*
6 *eligibility triggers allowed by federal regulations.*

7 *(d) The definitions of “activities of daily living” to be*
8 *used verbatim in policies and certificates that are not*
9 *intended to qualify for favorable tax treatment under*
10 *Public Law 104-191 include the following:*

11 *(1) Eating, which shall mean reaching for, picking up,*
12 *and grasping a utensil and cup; getting food on a utensil,*
13 *and bringing food, utensil, and cup to mouth;*
14 *manipulating food on plate; and cleaning face and hands*
15 *as necessary following meals.*

16 *(2) Bathing, which shall mean cleaning the body using*
17 *a tub, shower, or sponge bath, including getting a basin*
18 *of water, managing faucets, getting in and out of tub or*
19 *shower, and reaching head and body parts for soaping,*
20 *rinsing, and drying.*

21 *(3) Dressing, which shall mean putting on, taking off,*
22 *fastening, and unfastening garments and undergarments*
23 *and special devices such as back or leg braces, corsets,*
24 *elastic stockings or garments, and artificial limbs or*
25 *splints.*

26 *(4) Toileting, which shall mean getting on and off a*
27 *toilet or commode and emptying a commode, managing*
28 *clothing and wiping and cleaning the body after toileting,*
29 *and using and emptying a bedpan and urinal.*

30 *(5) Transferring, which shall mean moving from one*
31 *sitting or lying position to another sitting or lying position;*
32 *for example, from bed to or from a wheelchair or sofa,*
33 *coming to a standing position, or repositioning to*
34 *promote circulation and prevent skin breakdown.*

35 *(6) Continence, which shall mean the ability to control*
36 *bowel and bladder as well as use ostomy or catheter*
37 *receptacles, and apply diapers and disposable barrier*
38 *pads.*

1 (7) *Ambulating, which shall mean walking or moving*
2 *around inside or outside the home with or without the aid*
3 *of a cane, crutches, or braces.*

4 SEC. 5. Section 10232.8 of the Insurance Code is
5 amended and renumbered to read:

6 10232.9. (a) Every long-term care policy or certificate
7 that purports to provide benefits of home care or
8 community-based services, shall provide at least the
9 following:

10 (1) Home health care.

11 (2) Adult day care.

12 (3) Personal care.

13 (4) Homemaker services.

14 (5) Hospice services.

15 (6) Respite care.

16 (b) For purposes of this section, policy definitions of
17 these benefits may be no more restrictive than the
18 following:

19 (1) “Home health care” is skilled nursing or other
20 professional services in the residence.

21 (2) “Adult day care” is medical or nonmedical care on
22 a less than 24-hour basis, provided in a licensed facility
23 outside the residence, for persons in need of personal
24 services, supervision, protection, or assistance in
25 sustaining daily needs, including eating, bathing,
26 dressing, ambulating, transferring, toileting, and taking
27 medications.

28 (3) “Personal care” is assistance with the activities of
29 daily living, including the instrumental activities of daily
30 living, provided by a skilled or unskilled person under a
31 plan of care developed by a physician or a
32 multidisciplinary team under medical direction.
33 “Instrumental activities of daily living” include using the
34 telephone, managing medications, moving about outside,
35 shopping for essentials, preparing meals, laundry, and
36 light housekeeping.

37 (4) “Homemaker services” is assistance with activities
38 necessary to or consistent with the insured’s ability to
39 remain in his or her residence, that is provided by a skilled
40 or unskilled person under a plan of care developed by a

1 physician or a multidisciplinary team under medical
2 direction.

3 (5) “Hospice services” are outpatient services not paid
4 by Medicare, that are designed to provide palliative care,
5 alleviate the physical, emotional, social, and spiritual
6 discomforts of an individual who is experiencing the last
7 phases of life due to the existence of a terminal disease,
8 and to provide supportive care to the primary caregiver
9 and the family. Care may be provided by a skilled or
10 unskilled person under a plan of care developed by a
11 physician or a multidisciplinary team under medical
12 direction.

13 (6) “Respite care” is short-term care provided in an
14 institution, in the home, or in a community-based
15 program, that is designed to relieve a primary caregiver
16 in the home. This is a separate benefit with its own
17 conditions for eligibility and maximum benefit levels.

18 (c) Home care benefits shall not be limited or
19 excluded by any of the following:

20 (1) Requiring a need for care in a nursing home if
21 home care services are not provided.

22 (2) Requiring that skilled nursing or therapeutic
23 services be used before or with unskilled services.

24 (3) Requiring the existence of an acute condition.

25 (4) Limiting benefits to services provided by
26 Medicare-certified providers or agencies.

27 (5) Limiting benefits to those provided by licensed or
28 skilled personnel when other providers could provide the
29 service, except where prior certification or licensure is
30 required by state law.

31 (6) Defining an eligible provider in a manner that is
32 more restrictive than that used to license that provider by
33 the state where the service is provided.

34 (7) Requiring “medical necessity” or similar standard
35 as a criteria for benefits.

36 (d) Every comprehensive long-term care policy or
37 certificate that provides for both institutional care and
38 home care and that sets a daily, weekly, or monthly
39 benefit payment maximum, shall pay a maximum benefit
40 payment for home care that is at least 50 percent of the

1 maximum benefit payment for institutional care, and in
2 no event shall home care benefits be paid at a rate less
3 than fifty dollars (\$50) per day. Insurance products
4 approved for residents in continuing care retirement
5 communities are exempt from this provision.

6 Every such comprehensive long-term care policy or
7 certificate that sets a durational maximum for
8 institutional care, limiting the length of time that benefits
9 may be received during the life of the policy or
10 certificate, shall allow a similar durational maximum for
11 home care that is at least one-half of the length of time
12 allowed for institutional care.

13 SEC. 6. Section 10234.93 of the Insurance Code is
14 amended to read:

15 10234.93. (a) Every insurer of long-term care in
16 California shall:

17 (1) Establish marketing procedures to assure that any
18 comparison of policies by its agents or other producers
19 will be fair and accurate.

20 (2) Establish marketing procedures to assure
21 excessive insurance is not sold or issued.

22 (3) Submit to the commissioner within six months of
23 the effective date of this act, a list of all agents or other
24 insurer representatives authorized to solicit individual
25 consumers for the sale of long-term care insurance. These
26 submissions shall be updated at least semiannually.

27 (4) Provide the following continuing education and
28 require that each agent or other insurer representative
29 authorized to solicit individual consumers for the sale of
30 long-term care insurance shall satisfactorily complete the
31 following continuing education requirements which shall
32 be part of, and not in addition to, the continuing
33 education requirements in Section 1749.3:

34 (A) For licensees issued a license after January 1, 1992,
35 eight hours of education in each of the first four 12-month
36 periods beginning from the date of original license
37 issuance and thereafter and eight hours of education prior
38 to each license renewal.



(B) For licensees issued a license before January 1, 1992, eight hours of education prior to each license renewal.

Licensees shall complete the initial continuing education requirements of this section prior to being authorized to solicit individual consumers for the sale of long-term care insurance.

The continuing education required by this section shall consist of topics related to long-term care services and long-term care insurance, including, but not limited to, California regulations and requirements, available long-term care services and facilities, changes or improvements in services or facilities, differences in eligibility for benefits and tax treatment between ~~tax qualified and non-tax qualified policies~~ *policies intended to be federally qualified and those not intended to be federally qualified*, the effect of inflation in eroding the value of benefits ~~and~~, the importance of inflation protection, *NAIC consumer suitability standards and guidelines*, and alternatives to the purchase of private long-term care insurance.

(5) Display prominently on page one of the policy or certificate and the outline of coverage: “Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.”

(6) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.

(7) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subdivision.

(8) Every insurer shall provide to a prospective applicant, at the time of solicitation, written notice that the Health Insurance Counseling and Advocacy Program (HICAP) provides health insurance counseling to senior California residents free of charge. Every agent shall

1 provide the name, address, and telephone number of the
2 local HICAP program. Where this is impractical, the
3 prospective applicant shall be given the department's
4 hotline telephone number, 1-800-927-HELP, through
5 which the consumer can get information about HICAP.
6 local HICAP program and the statewide HICAP
7 telephone number, 1-800-434-0222.

8 (b) In addition to other unfair trade practices,
9 including those identified in this code, the following acts
10 and practices are prohibited:

11 (1) Twisting. Knowingly making any misleading
12 representation or incomplete or fraudulent comparison
13 of any insurance policies or insurers for the purpose of
14 inducing, or tending to induce, any person to lapse,
15 forfeit, surrender, terminate, retain, pledge, assign,
16 borrow on, or convert any insurance policy or to take out
17 a policy of insurance with another insurer.

18 (2) High pressure tactics. Employing any method of
19 marketing having the effect of or tending to induce the
20 purchase of insurance through force, fright, threat,
21 whether explicit or implied, or undue pressure to
22 purchase or recommend the purchase of insurance.

23 (3) Cold lead advertising. Making use directly or
24 indirectly of any method of marketing which fails to
25 disclose in a conspicuous manner that a purpose of the
26 method of marketing is solicitation of insurance and that
27 contact will be made by an insurance agent or insurance
28 company.

29
30 CORRECTIONS

31 Text — Pages 11, and 13.